

B. K. asks the Utah Labor Commission to review Administrative Law Judge Sessions' decision regarding Ms. K.'s claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-3-102(2) and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On May 21, 2002, Ms. K. filed an application asking the Commission to order Edo Western and its workers' compensation insurance carrier, Hartford Casualty Insurance (referred to jointly as "Edo" hereafter), to pay workers' compensation benefits for an injury to Ms. Kinston's shoulder. Judge Eblen held an evidentiary hearing on the claim on May 28, 2003. At the hearing, Judge Eblen permitted Ms. K. to amend her application from a claim for workers' compensation benefits to a claim for occupational disease benefits.

After the hearing, Judge Eblen referred the medical aspects of the claim to a medical panel. The panel issued its report on July 14, 2004. Thereafter, Judge Eblen resigned as an ALJ and this matter was assigned to Judge Sessions. On December 14, 2004, Judge Sessions issued his decision denying Ms. K.'s claim. However, it appears that Judge Sessions evaluated the claim as an accidental injury under the Workers' Compensation Act, rather than as an occupational disease under the Occupational Disease Act.

In a motion for review filed on January 12, 2005, Ms. K. asked that her claim be evaluated under the Occupational Disease Act. Edo responded to Ms. Kinston's motion for review by arguing that the motion for review was untimely and that Judge Sessions properly analyzed Ms. K.'s claim.

DISCUSSION AND CONCLUSION OF LAW

As a preliminary matter, the Commission notes Edo's argument that the Commission lacks jurisdiction to consider Ms. K.'s motion for review because the motion was not timely filed. Edo's argument stems from Ms. K.'s clerical mistake in using an incorrect case number on her motion for review. However, it is clear that Ms. K. intended to obtain review of Judge Sessions' decision and filed her motion for review well within the 30-day time period allowed by law. The Commission finds that Ms. K.'s motion for review was timely filed and that the Commission has jurisdiction to consider the merits of Ms. K.'s motion for review.

Turning to the question of whether Judge Sessions applied the correct law in considering Ms. K.'s claim, the Commission notes that Judge Sessions' decision does not explicitly state whether Ms. K.'s claim is being evaluated under the Workers' Compensation Act or the Occupational Disease Act. However, the substance of the decision indicates that Judge Sessions mistakenly applied the Workers' Compensation Act to this occupational disease claim. This is not an insignificant error in light of the differences between the two Acts' scope of coverage and provisions for apportionment, among other things. The Commission will, therefore, remand this matter to Judge Sessions for

evaluation under the Occupational Disease Act.

ORDER

The Commission sets aside Judge Sessions' decision of December 14, 2004, and remands this matter to the Adjudication Division for adjudication of Ms. K.'s claim under the Utah Occupational Disease Act. It is so ordered.

Dated this 29th day of July, 2005.

R. Lee Ellertson
Utah Labor Commissioner